



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 13 2020

GENERAL NOTICE and INFORMATION REQUEST
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
SENT VIA EMAIL MARIEMCCORMICK8389@GMAIL.COM
AND REGISTERED MAIL RETURN RECEIPT REQUESTED

The Estate of David W. Smith
c/o Mary Marie McCormick, Executor
117 C Moberly Avenue
Richmond, Kentucky 40475

Re: General Notice Letter and Information Request for the Looney Road Superfund Site in
Athens, Limestone County, Alabama

Dear Ms. McCormick:

This letter is being sent to you in your capacity as the Executor of the Estate of David W. Smith (Smith Estate). Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal "Superfund" law, the EPA is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. The EPA has documented that such a release has occurred at the Looney Road Superfund Site located at 19675 Looney Road, Athens, Limestone County, Alabama (the Site). The EPA has spent, and is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to the EPA, the EPA has determined that the Smith Estate may be responsible under CERCLA for cleanup of the Site or costs the EPA has incurred in cleaning up the Site. The EPA has determined that a time-critical removal action described below is needed at the Site and requests that the Smith Estate perform or finance the removal action.

Site Description

The former owner of the Site, David W. Smith, is now deceased. Prior to his death, he operated a salvage yard at the Site. Mr. Smith purchased materials and equipment from Redstone Arsenal, NASA, and other sources and stockpiled them on the Site. Numerous fires have occurred at the Site in the past decade, including several in the past year. The Alabama Department of Environmental Management contacted the EPA on September 11, 2019, to request assistance assessing the Site. On November 19 2019, the EPA conducted a removal site evaluation (RSE) at the Site. The EPA On-Scene Coordinator



(OSC) estimates that he observed as many as 900 containers and drums at the Site ranging in size from a half gallon to 50 gallons. Many of the containers and drums are badly compromised by recent fires and the contents are currently exposed to the environment. The OSC also observed various reagent grade chemicals and sacks of solid material as well as piping insulation and roofing materials resembling those known to contain asbestos.

While the labels and placards on numerous containers were clearly visible, others were badly burned. The placards and labels that are still visible show that flammable materials are present at the Site. Safety Data Sheets the OSC obtained for labeled chemical containers revealed that some of them contain chemical substances that are hazardous substances. During the RSE, the EPA took samples of the contents of numerous containers. The sampling data shows the presence of hazardous substances in many containers at the Site.

Explanation of Potential Liability

Under Sections 106(a) and 107(a) of CERCLA, potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare, or the environment, unless they can assert one of the statutory defenses. PRPs may also be liable for all costs incurred by the United States Government in responding to any release or threatened release at the site. Such costs include, but are not limited to, expenditures for investigations, planning, response, oversight and enforcement activities. In addition, PRPs may be required to pay for damages for injury to natural resources or for their destruction or loss, together with the cost of assessing such damages.

Based on the information collected, the EPA believes that the Smith Estate may be liable under Section 107(a) of CERCLA as the current owner of the Site. If the Site property is sold, the Smith Estate may remain liable based on Mr. Smith's ownership of the property at the time that hazardous substances were disposed at the Site.

Please note that, because the EPA has a potential claim against the Smith Estate, it should be treated as a creditor with regard to the distribution of the estate assets. Formal notice of a claim to the Smith Estate shall follow.

Future Site Response Activities

The EPA has determined that a time-critical removal action is necessary at the Site, which will include, at a minimum, the following activities at the Site:

- a. Collecting soil, water, and air samples as may be determined to be necessary;
- b. Sampling solids or liquids stored or disposed of on the Site;
- c. Sampling soil, drums, tanks, or any other equipment to characterize wastes;
- d. Performing necessary confirmation soil sampling and then treating or disposing of any contaminated soil;
- e. Removing or treating any substances or conditions that the EPA determines to be a threat to the public health or welfare of the United States or the environment;

- f. Restricting public access to the Site during the removal action;
- g. Transporting and disposing of all wastes from the Site to a facility approved by the EPA;
- h. Crushing any empty drums for off-site disposal; and
- i. Transporting equipment onto and about the Site as necessary to accomplish the above activities.

PRP Response / Invitation to Conduct Removal Action

The EPA encourages you, as the executor of the Smith Estate, to contact the EPA if there is any interest in participating in negotiations to perform and/or finance the time-critical removal activities at the Site under an Administrative Settlement and Order on Consent (ASOC). A response indicating your willingness to negotiate an ASOC is due within fourteen (14) calendar days of your receipt of this letter. If the Smith Estate is willing and financially able to perform the time-critical removal actions, the EPA will draft an ASOC for your review and consideration.

If a response indicating willingness to participate in negotiations is not received by the EPA within fourteen (14) calendar days, the EPA will assume that the Smith Estate has elected not to conduct the time-critical removal activities. Please be aware, however, that the Smith Estate will remain potentially liable for the EPA's costs incurred in undertaking activities at the Site.

Response to this notice letter may be mailed or emailed to:

Mr. Graham Burkhalter
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303
Email: Burkhalter.Robert@epa.gov

Information to Assist You

The EPA will establish an Administrative Record that contains documents that serve as the basis for the EPA's selection of a cleanup action for the Site. The Administrative Record will be located near the Site and will be available to you and the public for inspection and comment. The Administrative Record also will be available for inspection and comment at the Superfund Records Center, EPA Region 4, Atlanta Federal Center, 61 Forsyth St. SW, Atlanta, Georgia, 30303.

Information Request

Under Section 104(e)(2) of CERCLA, 42 U.S.C. Section § 9604(e)(2), the EPA has broad information gathering authority which allows the EPA to require persons to furnish information or documents relating to: (A) The identification, nature and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility, and (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

While the EPA seeks the Smith Estate's cooperation in this investigation, compliance with the Information Request is required by law. Failure to respond fully and truthfully to the Information Request within fifteen (Sam Nunn Atlanta Federal Center) calendar days of receipt of this letter, or to adequately justify such failure to respond, can result in enforcement action by the EPA pursuant to Section 104(e) of CERCLA. This statute permits the EPA to seek the imposition of penalties of up to \$57,317 for each day of continued non-compliance. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

If you have information about other parties who may have information which may assist the EPA in its investigation of the Site or may be responsible for the contamination at the Site, that information should be submitted within the time specified herein.

Enclosure A contains (1) Information Request Instructions, (2) Information Request Definitions, and (3) Information Request Questions. Your responses to the Information Request Questions should be mailed to:

Christopher E. Jones
Enforcement Project Manager
Superfund Enforcement and Community Engagement Branch
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Email: Jones.christophere@epa.gov

Resources and Information for Small Businesses

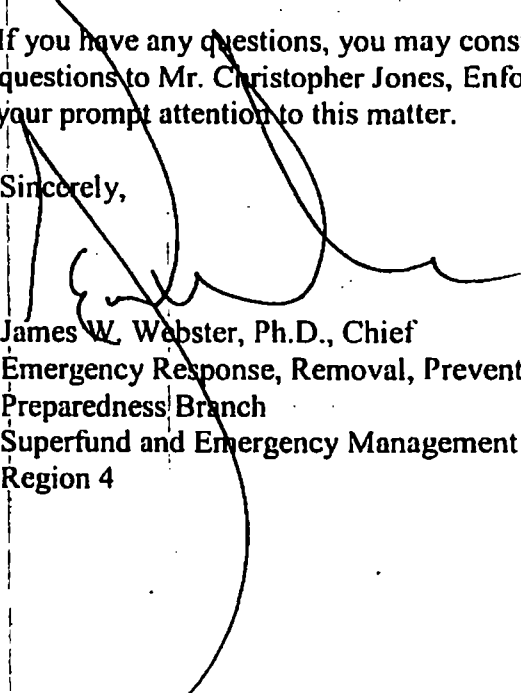
As you may be aware, on January 11, 2002, the Superfund Small Business Liability Relief and Brownfield Revitalization Act was enacted. This Act contains several exemptions and defenses to CERCLA liability that we suggest all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/ablrbra.htm> and review the EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

The EPA has created a number of helpful resources for small businesses. The EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov.

In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo. Finally, the EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (SBREFA), which can be found at <http://www.epa.gov/Compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf>.

Please give these matters your immediate attention. If you have any questions, you may consult with the EPA prior to the time specified above. Please direct questions to Mr. Christopher Jones, Enforcement Project Manager, at (404) 562-9016. Thank you for your prompt attention to this matter.

Sincerely,



James W. Webster, Ph.D., Chief
Emergency Response, Removal, Prevention and
Preparedness Branch
Superfund and Emergency Management Division,
Region 4

Enclosures

ENCLOSURE A
INFORMATION REQUEST

Instructions

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.
2. Precede each answer with the number of the Question to which it corresponds.
3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.
4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds.
5. The information requested herein must be provided even though you may contend that it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and (F), Section 3007(b) of RCRA, 42 U.S.C. § 6927(b), and 40 C.F.R. § 2.203(b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary," or "company confidential." Information covered by such a claim will be disclosed by the EPA only to the extent, and only by means, of the procedures set forth in statutes and regulation set forth above. If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

Definitions

The following definitions shall apply to the following words as they appear in this Enclosure A:

1. The term "person" shall have the same definition as in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21): an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.
2. The term the "Site" shall mean Looney Road Superfund Site in Athens, Limestone County, Alabama
3. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known

home address and home telephone number, and present or last known job title, position or business.

4. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
5. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.
6. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300, or 40 C.F.R. Parts 260-280, in which case the statutory or regulatory definitions shall apply.

QUESTIONS

1. Identify the person(s) answering these Questions on behalf of the Estate of David W. Smith. Please provide each person's full name, phone number, email address, and physical address.
2. Have you, Mary Marie McCormick, in your individual capacity conducted any industrial, commercial, manufacturing, or salvage activities at the Site? Such activities may have included storing, painting, stripping, cleaning, dismantling, or repairing metals, machinery, electronics or other equipment. If your answer is yes, please describe the activities you conducted and the timeframe in which the activities were conducted.
3. Have you, Mary Marie McCormick, in your capacity as the executor of the Estate of David W. Smith, conducted any industrial, commercial, manufacturing, or salvage activities at the Site? Such activities may have included storing, painting, stripping, cleaning, dismantling, or repairing metals, machinery, electronics or other equipment. If your answer is yes, describe the activities you conducted.
4. Do you have knowledge regarding any fires that have occurred at the Site? If so, for each fire that you have knowledge of, please indicate:
 - a. The approximate date(s) of the fire(s);
 - b. What was burned during the fire(s); and
 - c. Identify the name(s) and contact information of the person(s) who started the fire(s).